



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/714,568

11/16/2000

Philippe Choquier

MS147193.2

5480

27195

7590

05/06/2004

AMIN & TUROCY, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST NINTH STREET
CLEVELAND, OH 44114

EXAMINER

PHAN, THAI Q

ART UNIT

PAPER NUMBER

2128

DATE MAILED: 05/06/2004

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/714,568

Applicant(s)

CHOQUIER ET AL.

Examiner

Thai Phan

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to patent application no. 09/714,568, filed on 11/16/2000. Claims 1-44 are pending in the action.

Drawings

The drawings filed on 11/16/2000 are acceptable for examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is unclear for it incomplete.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky et al, US patent no. 6,463,454 B1.

As per claim 1, Lumelsky discloses a method and system for providing services to users, and managing load distribution and resource availability for user on an internet environment with feature limitations very similar to the claimed invention. According to Lumelsky, the environment architecture includes a network manager similar to the claimed network topology manager for managing network resources and services

Art Unit: 2128

availability (Fig. 12), an application manager for maintaining applications on the network (Figs. 4, 12, col. 4, lines 37-55, col. 6, lines 45-50, col. 6, line 61 to col. 7, line 24, for example), wherein the network manager in communication with application managers to initiate a scaling of the applications associated with the application manager to the network members or resources to other network members or resources as claimed. Lumelsky does not expressly disclose topology manager as claimed.

Practitioner in the art at the time of the invention was made would have found network manager for managing network members above would imply the claimed limitation of topology manager because the network manager manages network members, resources, elements based on the network topology.

As per claim 2, Lumelsky discloses network manager or topology manager as claimed is member of network elements for network applications (col. 23, lines 38-54).

As per claim 3, Lumelsky discloses network management as claimed is distributed over and across the network members for resource deployment and availability.

As per claim 4, Lumelsky discloses process synchronization for planning and distribution (col. 7, lines 25-40).

As per claim 5, Lumelsky discloses manager controller as claimed (Fig. 4).

As per claim 6, Lumelsky discloses fault tolerance which would imply failover and failover selected by administrator.

As per claims 7-28, Lumelsky discloses the claimed limitations in order to distribute the load and manage resources in a network.

As per claim 29, Lumelsky discloses a method and system for providing services to users, and managing load distribution and resource availability for user on an internet environment with feature limitations very similar to the claimed invention. According to Lumelsky, the environment architecture includes a network manager similar to the claimed network topology manager for managing network resources and services availability (Fig. 12), an application manager for maintaining applications on the network (Figs. 4, 12, col. 4, lines 37-55, col. 6, lines 45-50, col. 6, line 61 to col. 7, line 24, for example), wherein the network manager in communication with application managers to initiate a scaling of the applications associated with the application manager to the network members or resources to other network members or resources as claimed. Lumelsky does not expressly disclose topology manager for communication in between members of the network as claimed.

Practitioner in the art at the time of the invention was made would have found network manager for managing network members above would imply the claimed limitation of topology manager because the network manager manages network members, resources, elements based on the network topology.

As per claims 30-33, Lumelsky discloses load balancing (Figs. 5-12).

As per claim 34, Lumelsky discloses a method and system for providing services to users, and managing load distribution and resource availability for user on an internet environment with feature limitations very similar to the claimed invention. According to Lumelsky, the environment architecture includes a network manager similar to the claimed network topology manager for managing network resources and services

Art Unit: 2128

availability (Fig. 12), an application manager for maintaining applications on the network (Figs. 4, 12, col. 4, lines 37-55, col. 6, lines 45-50, col. 6, line 61 to col. 7, line 24, for example), wherein the network manager in communication with application managers to initiate a scaling of the applications associated with the application manager to the network members or resources to other network members or resources as claimed. Lumelsky does not expressly disclose a topology manager for node communications.

Practitioner in the art at the time of the invention was made would have found network manager for managing network members above would imply the claimed limitation of topology manager because the network manager manages network members, resources, elements based on the network topology.

As per claims 35-44, Lumelsky discloses the claimed limitations for load balancing and resource management efficient (col. 19, line 35 to col. 27, line 21, for example).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thai Phan whose telephone number is 703-305-3812.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 703-305-9704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2128

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thai Phan
May 01, 2004

Thai Phan
Patent Examiner
AU: 2128